

APPEAL NO. 022960
FILED JANUARY 10, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 5, 2002. The hearing officer determined that respondent (claimant) had good cause for failing to submit to the required medical examination (RME) on February 4, 2002, and that she is entitled to temporary income benefits (TIBs) from February 4 through June 20, 2002. Appellant (carrier) appeals these contentions, contending that claimant did not have good cause; that the hearing officer abused his discretion; and that claimant is not entitled to TIBs because she never submitted to an RME examination. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

This case involves the application of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.6(h) (Rule 126.6(h)). Rule 126.6(h)(1) provides that a carrier may suspend TIBs if an employee fails to attend an RME without good cause. Carrier contends the hearing officer erred in determining that: (1) claimant had good cause for failing to attend the February 4, 2002, scheduled RME appointment and (2) claimant is entitled to TIBs from February 4 through June 20, 2002.

Claimant testified that on January 29, 2002, she received the first notice regarding an RME appointment with Dr. L scheduled for that same day. She said she did not get the letter until January 29, 2002, because she moved and did not receive the forwarded mail until then. Claimant said she called "MED Confirm" and they told her to call her adjuster. The letter claimant received regarding the "independent medical examination" appointment with Dr. L was from MED Confirm. We note that the phone number for MED Confirm listed on its stationary is the same phone number MED Confirm listed for Dr. L. Claimant said that after calling MED Confirm, she called her adjuster to reschedule the appointment, but the adjuster did not return her call. Instead, on February 1, 2002, claimant received another letter from MED Confirm stating that another RME with Dr. L had been scheduled for February 4, 2002. Claimant said she was unable to attend because of her husband's surgery that was to take place on January 31, 2002, and because she would need to care for him. Claimant said she again called MED Confirm because she would be unable to attend the February 4, 2002, appointment and was again instructed to call her adjuster, which she did. She said the adjuster did not return her call even though she called her eight times during the month of February.

Whether good cause exists for failure to attend an RME exam is a matter left up to the discretion of the hearing officer. That determination will not be set aside unless

the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 010828, decided May 16, 2001. The test for good cause is that of ordinary prudence; that is, the degree of diligence an ordinarily prudent person would have exercised under the same or similar circumstances. Texas Workers' Compensation Commission Appeal No. 94244, decided April 15, 1994.

Carrier contends that claimant did not have good cause because "Rule 126.6(b) directs the claimant to contact the RME doctor and reschedule...." Carrier notes that the hearing officer determined that "claimant made a good faith effort to contact her adjuster to reschedule the examination," but that the rule does not call for contact with the adjuster, it calls for contact with the doctor. However, in this case, the hearing officer stated that claimant contacted MED Confirm each of the two times she received a letter regarding an RME appointment. The telephone number for MED Confirm is the same as the telephone number MED Confirm listed for Dr. L. The hearing officer could find from the evidence that claimant did call the RME doctor in order to reschedule. Our review of the record does not indicate that the hearing officer acted without reference to any guiding rules or principles in determining that the claimant had good cause for missing the February 4, 2002, RME appointment scheduled with Dr. L.

Carrier next contends that claimant is not entitled to TIBs from February 4 through June 20, 2002, because she did not later submit to the RME examination, citing Rule 126.6(h)(3). However, because of claimant's actions in contacting the RME doctor as required by the rule, carrier was not entitled to suspend TIBs in this case. Further, the hearing officer could find that despite claimant's efforts, no RME examination had been rescheduled, so claimant did not "fail to submit" to an examination. We perceive no error.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **SECURITY NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RONALD I. HENRY
10000 NORTH CENTRAL EXPRESSWAY
DALLAS, TX 75230.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Roy L. Warren
Appeals Judge